IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7818 OF 2004

1. Antony Xavier Soares,)
Aged 91 years, Occ: Retired.)

2. Mrs.Eliza Soares,)
Aged 82 years, Occ: Housewife,)
Both residing at Flat No.1,)
Ground Floor, Aldona House,)
Plot No.74, Rebellow Road,)
St.Sebastian Colony,)
Bandra W), Mumbai - 400 050.). Petitioners
(Org.Plaintiffs

Vs.

Mr.Seby S.Nayar,)
Aged 60, Adult, Occ: Retired,)
Residing at Flat No.4, 1st Floor,)
Aldona House, Plot No.74,)
Rebello Road, St.Sebastian Colony,)
Bandra (West), Mumbai - 400 050.). Respondent
(Org.Defendant)

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Shri R.A.Thorat for the petitioners.

Shri Roque D'mello for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 26th OCTOBER, 2004.

Oral Judgment:

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioners challenge the order dated 6th August, 2004 passed by the trial Court to the extent it dismisses the application filed by the petitioners for amendment to the plaint.

3. Undisputedly, the proposed amendment relates to the events which have occurred subsequent to the filing of the plaint. The trial Court, however, rejected the application solely on the ground that "the said proposed amendment is on hypothetical facts and the same is a matter of evidence, therefore, is unnecessary." Apparently the trial Court has not at all applied its mind to the issue which was required to be considered while dealing with the application for amendment to the pleadings. It was necessary for the trial Court to consider whether the proposed amendment was relevant and necessary to decide the real question in controversy as is specified under Order 6 Rule 17 of the Code of Civil Procedure, 1908. Once the facts proposed to be brought on record by way of amendment relate to the issue of bonafide need of the landlord, the ground on which the application for eviction of the respondent-tenant has been filed by the petitioners, it was necessary for the trial Court to ascertain whether the proposed amendment was

related to the said ground or not, and if not, then whether the same relates to any other ground, and if it discloses any event subsequent to the filing of the plaint, the same ought to have been allowed by the trial Court as the same, in no way, would result in taking away any right which can be said to have accrued in favour of the respondent. The Courts below having totally ignored this aspect of the matter and having disposed of the application for amendment to the plaint on the ground on which the application for amendment was not to be disposed of, the impugned order apparently discloses improper exercise of its jurisdiction while rejecting the application for amendment as well as non-application of mind to the matter in issue.

4. Plain reading of the proposed amendment discloses that it relates to the facts pertaining to the requirement of the premises for bonafide need of the petitioners, and therefore, the same are necessary to decide the real question in controversy between the parties, and therefore, the application deserved to be allowed by the trial Court.

5. The petition, therefore, succeeds. The impugned order is hereby quashed and set aside. The

application for amendment is hereby allowed. Amendment to be carried out within 15 days from the date of receipt of the writ of this Court by the trial Court. Needless to say that on amendment being carried out to the plaint, the respondent is entitled to file further written statement in relation to the amended pleadings in the plaint. Rule is made absolute accordingly with no order as to costs.